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<p>In re:</p> <p>KEVIN JARED ROSENBERG,</p> <p>Debtor.</p>	<p>Bankr. Case No. 18-35379-cgm</p> <p>Adv. Pro. No. 18-09023-cgm</p>
<p>KEVIN JARED ROSENBERG,</p> <p>Plaintiff-Appellee,</p> <p>v.</p> <p>EDUCATIONAL CREDIT MANAGEMENT CORPORATION,</p> <p>Defendant-Appellant.</p>	<p>Civil Action No. 7:20-cv-00688-PMH</p> <p>On appeal from Memorandum Decision and Order Granting Summary Judgment in Favor of Plaintiff and Discharging Debtor’s Student Loan Under 11 U.S.C. § 523(a)(8) entered on January 7, 2020, by the Honorable Cecelia G. Morris, Chief U.S.B.J.</p>

**APPELLANT’S MOTION TO STRIKE APPELLEE’S CORRECTED
 RESPONSE BRIEF AS VIOLATIVE OF JUNE 24, 2020 ORDER**

Appellant Educational Credit Management Corporation (“ECMC”), by and through its attorneys, Law Offices of Kenneth L. Baum LLC, hereby moves to strike Appellee Kevin Jared Rosenberg’s (“Rosenberg”) *Corrected Brief in Opposition to Appellant Educational Credit Management Corporation’s Brief* [Dkt. No. 26] (the “Corrected Brief”) and states as follows:

1. On May 20, 2020, ECMC filed its opening brief on appeal [Dkt. No. 20].
2. On June 23, 2020, Rosenberg filed his *Brief in Opposition to Appellant Educational Credit Management Corporation’s Brief* [Dkt. No. 22] (the “Original Brief”). Later that day, Rosenberg’s counsel filed a letter to the Court [Dkt. No. 23], requesting permission to

file a corrected brief “to correct deficiencies in [the Original Brief]..., including a lack of table of contents, table of authorities, and other errors....”

3. By letter dated June 23, 2020 [Dkt. No. 24], ECMC’s counsel consented to Appellee filing a corrected version of his brief, but limited to including tables of contents and authorities, inserting complete citations to the record, and rectifying any formatting problems in the Original Brief, without including any substantive revisions or additions.

4. By Order dated June 24, 2020 [Dkt. No. 25], the Court granted Appellee’s request to file a corrected brief, but specifically limited any revisions to those proposed in ECMC’s letter. The Court order specifically stated: “Application to file a corrected appellee’s brief granted, due 6/30/2020, limited to including tables of contents and authorities, inserting complete citations to the record, and rectifying any formatting problems in the original brief, and not including any substantive revisions or additions in the corrected brief.”

5. On June 27, 2020, Appellee filed the Corrected Brief. Contrary to the Court’s Order of three (3) days prior, the Corrected Brief includes numerous revisions and additions that went well beyond the specific limitations set by the Court. For the Court’s convenience, a legal blackline of the Corrected Brief, comparing it with the Original Brief, is attached as **Exhibit A**. This document was created by converting the filed .pdfs to Microsoft Word and running a standard Compare (legal blackline) function, and then converting the blacklined Word file back to a .pdf.

6. In light of Appellee’s blatant violation of the Court’s June 24, 2020 Order, ECMC respectfully requests that the Court strike the Corrected Brief from the record.

WHEREFORE, for the foregoing reasons, ECMC respectfully requests that the Court enter an order striking the Corrected Brief from the record and for such other and further relief as the Court deems just and proper.

Dated: Hackensack, New Jersey
July 9, 2020

Motion granted. The Court strikes Appellee's corrected brief (Doc. 26). Appellee's corrected brief is in direct contravention of my June 24, 2020 Order which granted Appellee permission to file a corrected brief "limited to including tables of contents and authorities, inserting complete citations to the record, and rectifying any formatting problems in the original brief, and not including any substantive revisions or additions in the corrected brief." (Doc. 25). The briefing schedule remains in place. Appellant's reply brief is due July 15, 2020. (See *id.*). Additionally, Appellee's request for leave to file a sur-reply is denied without prejudice. After Appellant files its reply brief, Appellee may promptly renew its request indicating why good cause exists to permit a sur-reply. The Clerk is instructed to strike Doc. 26 from the docket and terminate ECF No. 32.

Dated: New York, NY
July 10, 2020

SO ORDERED.



Philip M. Halpern U.S.D.J.

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